

City and County of Honolulu
Community Development Block Grant Program

Loan Conversion Policy and Procedures
For Special Needs Housing Projects

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City and County of Honolulu
Special Needs Housing Program
Loan Conversion Policy and Procedures

1. Purpose

To set forth the policies and procedures to convert loans funded through the Community Development Block Grant program and extended to Nonprofit Corporations into grants.

2. Definitions

"BFS" means the Department of Budget and Fiscal Services of the City and County of Honolulu.

"City" means the City and County of Honolulu, a municipal corporation of the State of Hawaii.

"CBDD" means the Community-Based Development Division of the Department of Community Services.

"CDBG" means the Community Development Block Grant program, authorized under Title 1 of the Housing and Community Development Act of 1974.

"DCS" means the Department of Community Services of the City and County of Honolulu.

"FGU" means the Federal Grants Unit of the Department of Budget and Fiscal Services.

"HUD" means the United States Department of Housing and Urban Development.

"Nonprofit Corporation" means a business entity organized under Section 501(c)(3) of the Internal Revenue Code and authorized to do business in the State of Hawaii.

"Nonperforming Loan" means a loan for which a payment has not been received for a period of six consecutive months.

"Residual Receipts" means revenue remaining after payment of operating expenses and the provision of reasonable reserves.

"Special Needs Housing" means housing for persons with mental, physical, or social challenges whose ability to live independently can be maximized through a combination of appropriate housing and services.

"Subrecipient" means a Nonprofit Corporation which received CDBG funds from the City to undertake an eligible CDBG program activity.

"Subrecipient Agreement" means a contract between the City and a Subrecipient which states the purpose for which CDBG will be provided to the Nonprofit Corporation, and the terms and conditions under which CDBG funds, provided to a Nonprofit Corporation, may be expended.

3. Findings and Purpose

The City has provided CDBG funds to Nonprofit Corporations undertaking the acquisition, development and/or rehabilitation of real property for the purpose of operating Special Needs Housing projects in the form of loans. Loans were extended to the Nonprofit Corporations as a means of generating CDBG Program Income, and to allow the City to recapture its CDBG funds if the Nonprofit Corporation failed to use the real property acquired or improved with CDBG funds for its intended purpose. The Nonprofit Corporations, in good faith, accepted the loans as a means to further their mission and serve their clientele.

The City finds that Special Needs Housing projects that have been assisted with CDBG funds provided by the City, have established a record of serving some of the most vulnerable members of our community in conformance with their Subrecipient Agreements. Many residents of Special Needs Housing projects are afflicted by disabilities which prevent them from securing employment, are facing social challenges including domestic violence, and in the absence of appropriate housing and supportive services would become homeless or institutionalized.

The City finds that Special Needs Housing projects are characterized by higher operating costs due to the need to provide supportive services, a greater degree of management oversight due to the nature of the clientele served, and lower revenue generation potential as rents, if charged, are typically set at below market rates to accommodate the limited financial resources of the client group. The high operating costs of Special Needs Housing projects exceeds the operating revenue generated through the collection of rents and fees from clients. Operators of Special Needs Housing projects must frequently seek operating subsidies from public and private sources to meet operating expenses and provide supportive services.

The City finds that as Special Needs Housing projects generally do not generate sufficient revenue to fully pay for operating expenses, it is unlikely that funds will be available to make fixed or residual receipts loan payments on CDBG loans. The City further finds that for the foreseeable future, it is unlikely that the funding environment will materially change as the fiscal conditions for the State and Federal governments continues to erode.

The City finds that the majority of Nonprofit Agencies receiving loans have successfully managed the Special Needs Housing projects assisted with CDBG funds for an extended period of time, and have established a track record of compliance with the terms and conditions of their CDBG Subrecipient Agreements.

The City finds that its current CDBG funding practices for projects involving the acquisition, construction and/or renovation of special needs housing projects is to provide CDBG funding exclusively in the form of grants, and to convert existing CDBG loans to grants would bring past projects in line with current funding practices.

The City further finds that Nonperforming Loans, which are carried as assets on the financial records of the City, should correctly be converted to a grant and written off as an asset of the City.

The City further finds that converting the CDBG loans to grants will strengthen the financial position of the Nonprofit Agency removing the CDBG loan as a liability of the Nonprofit Agency.

Given the City findings that (1) it is unlikely that the Nonprofit Agencies receiving CDBG loan funds for the acquisition, development, and/or improvements to Special Needs Housing projects will be able to make required loan payments; (2) the Nonprofit Agencies do not have adequate revenue producing ability to cover operating costs in many cases; and (3) that the Nonprofit Agencies have established a record of compliance with Subrecipient Agreements; The purpose of this policy therefore is to set forth the conditions and process for converting CDBG loans extended to Nonprofit Agencies for the limited purpose of acquiring, constructing, and/or improving real property for the purpose of Special Needs Housing, into grants in conformance with current CDBG funding practices.

4. Conditions of Conversion

In order for a CDBG loan for a Special Needs Housing project to be converted to a grant, the Subrecipient must meet the following requirements:

1. Operated the Special Needs Housing project assisted with CDBG funds for a minimum period of five (5) years in a manner consistent with the goals and objective of the project, and all CDBG program requirements as stated in the CDBG Subrecipient Agreement for the project, as determined by the City.
2. The Subrecipient has no outstanding CDBG monitoring findings related to the Special Needs Housing project assisted by the CDBG loan for a period of five (5) years preceding the request to convert the loan to a grant.
3. At the time of conversion to a grant the Subrecipient shall be current on all State, and Federal tax obligations as evidenced by a Certificate of Vendor Compliance or Tax Clearance Certificate current to within 60 days of date of the Nonprofit Agency's formal request to convert the loan.
4. At the time of conversion the Subrecipient must be current on all obligations to the City and County of Honolulu, with the exception of payments on the CDBG loan, including but not limited to, lease rents and real property taxes.

5. At the time of conversion, the Subrecipient shall have no outstanding findings in its most recent audit. This requirement is limited to audits prepared pursuant to OMB Circular A-133.

As a condition to converting a CDBG loan to a grant, the Subrecipient shall agree to a new five year compliance period commencing from the date which the loan is converted to a grant. During the new compliance period, the Subrecipient must operate the project in a manner consistent with the CDBG Subrecipient Agreement and the appropriate CDBG program national objective, as designated by the City. The new five year compliance period will be memorialized by a Use Restriction Agreement, a form of which is attached as Exhibit 3, which shall be recorded by the Subrecipient as a covenant that shall run with the project site.

5. Loan Conversion Process

5.1. Initial Request

Request for conversions of CDBG loans to grants shall be directed to DCS. Upon receipt of the request DCS shall acknowledge the receipt of the request in writing. The written acknowledgement shall also include (1) a statement that the City has the sole discretion on decisions to convert a CDBG loans to grant; and (2) a request to the Nonprofit Agency for the following documents:

1. A written statement from the nonprofit agency justifying the need to convert the loan to a grant.
2. A statement from the nonprofit agency that it is current on all obligations to the City including the payment of real property taxes and obligations relating to the lease of City land, if applicable.
3. Audited financial statements from the most recent fiscal year.
4. A tax clearance certificate or Certificate of Vendor Compliance current to within 60 days of the request.

5.2. Determination of Eligibility for Conversion

A copy of the request for conversion shall be forwarded by CBDD to the FGU. A determination of eligibility for conversion shall be based on the applicant's consistency with the conditions stated in Paragraph 3, above:

Condition	Reviewer	Source Documents
1. Operated the project assisted with CDBG funds for a minimum period of five years in a manner consistent with the goals and objective of the project, and all CDBG program requirements.	FGU	CDBG Subrecipient Loan Agreements, Post-Development Monitoring Reports.

2. The Subrecipient has no CDBG monitoring findings related to the project assisted by the loan for a period of five (5) years	FGU	Post-Development monitoring reports.
3. Subrecipient shall be current on all State, and Federal tax obligations.	CBDD	Certificate of Vendor Compliance, Tax Clearance Certificates
4. Subrecipient must be current on all obligations to the City and County of Honolulu	CBDD	Real Property Tax Records, lease documents (if applicable)
5. Subrecipient shall have no outstanding findings in its most recent audit.	CBDD	Annual Audit

FGU shall inform CBDD in writing of its determination that the Subrecipient has fulfilled the requirements under Conditions 1, and 2, above. CBDD shall determine if the Subrecipient has fulfilled the requirements under conditions 3, 4, and 5, above, and shall make a final determination that all conditions for a loan conversion are met.

5.3. Denial of Loan Conversion Request

A Subrecipient not meeting the conditions stated in Paragraph 3, above, shall be notified in writing that they are not eligible for conversion of their loan to a grant and shall be informed for the reasons for the denial. A Subrecipient may not reapply for conversion of a CDBG loan to a grant, for a period of 12 months after the most recent denial of the loan conversion request.

5.4. Approved Loan Conversion Requests

Subrecipients meeting the conditions stated in Paragraph 3, above, shall be notified in writing by DCS of the City's approval of the loan conversion request. The approval notice shall be copied to FGU. CBDD shall draft an Amendment, Agreement and Acknowledgement, a form of which is attached as Exhibit 1, which shall provide the terms and conditions under which the CDBG loan will be converted to a grant. CBDD shall also prepare a draft Release of Mortgage, a form of which is attached as Exhibit 2, if required. The draft Amendment, Agreement and Acknowledgement, and Release of Mortgage shall be circulated to the Corporation Counsel, BFS, and the Subrecipient for review and comment. CBDD shall also obtain the original Promissory Note memorializing the loan and shall mark the note as canceled as shown below:

CANCELED:	
By: _____	
Director of Budget and Fiscal Services	
Date: _____	

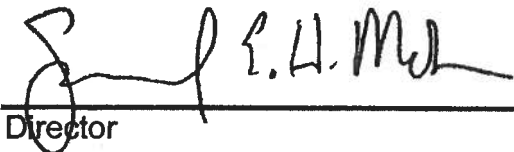
CBDD shall receive comments and circulate 3 original of the Amendment, Agreement and Acknowledgement, Use Restriction Agreement, and Release of Mortgage, if required, for execution. CBDD shall also transmit the marked Promissory Note to BFS for signature and dating. The Subrecipient shall be responsible for recording the Release of Mortgage. Upon execution, the documents shall be distributed as follows:

	Subrecipient	BFS - FGU	BFS - Fiscal Services	DCS - CBDD
Amendment, Agreement, and Acknowledgement	Original	Original	Copy	Original
Marked Promissory Note	Original	Copy	Copy	Copy
Release of Mortgage	Original	Original	Copy	Original
Use Restriction Agreement	Original	Original	Copy	Original

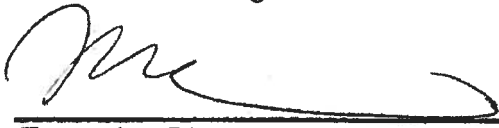
Policy effective MAY 1 2012. 201__.

Approved as to Content:

Department of Community Services


Director

Office of Housing


Executive Director

Approved as to Form and Legality


Deputy Corporation Counsel

Approved as to Program Requirements


Federal Grants Coordinator

Approved:

Department of Budget and Fiscal Services


Director

Exhibit 1

Amendment, Agreement and Acknowledgement
(Subrecipient Loan Agreement)

THIS AMENDMENT, AGREEMENT, AND ACKNOWLEDGEMENT, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 ("City") and _____, a Hawaii nonprofit corporation, the principal place of business and mailing address of which is _____, _____, Hawaii 967____ ("Subrecipient").

RECITALS

A. The City and Subrecipient entered into that certain Subrecipient Loan Agreement dated _____, _____ and identified as Contract F _____ which provided a loan of up to _____ AND ____/100 DOLLARS (\$_____) in Community Development Block Grant (CDBG) funds to Subrecipient (the "Loan") for the _____ (the "Project") located at _____, _____, Hawaii (the "Project Site").

B. The final disbursement of Loan funds was made to Subrecipient on _____, _____ via City Warrant No. _____, dated _____, _____ in the amount of \$_____.

C. The Loan was evidenced by that certain Promissory Note dated _____, _____, by Subrecipient, as maker, in favor of the City, as holder (the "Note"), in the principal amount of _____ and ____/100 DOLLARS (\$_____). The Loan was memorialized by a certain Mortgage and Security Agreement executed by the City and Subrecipient dated _____, _____ and recorded as Document No. _____ at the Bureau of Conveyances of the State of Hawaii on _____, _____.

D. Subrecipient has requested that the City cancel the indebtedness evidenced by the Note, and the City has determined that it would be in its best interest to grant Subrecipient's request.

AGREEMENT

NOW THEREFORE, for and in consideration of the promises and the covenants set forth herein the City and Subrecipient agree to the following:

1. Effective Date. Notwithstanding the execution of this Agreement by all parties, this Agreement shall not be effective until Subrecipient meets the conditions precedent set forth in paragraph 5 below.
2. Amendment. The Subrecipient Loan Agreement is amended to delete all requirements for the repayment of the Note. From and after the effective date of this

Exhibit 1

Agreement, the Subrecipient Loan Agreement shall be deemed to have been converted into a Subrecipient Grant Agreement. All references therein to a "loan" shall hereafter be deemed to refer to a grant, and any terms requiring repayment of the Note or of amounts advanced thereunder are hereby deleted.

3. City's Acknowledgement and Agreement. The City acknowledges that as of the Effective Date of this Agreement the indebtedness memorialized by the Note, including the outstanding principal and interest owed to the City by Subrecipient, is cancelled and forgiven, and Subrecipient shall have no further obligation to make any payments whatsoever under the Note.

4. Subrecipient's Acknowledgement and Agreement. Subrecipient acknowledges and agrees that for a period of five years from the Effective Date of this Agreement that it will maintain and operate the Project in a manner that conforms to the requirements of Contract F _____. In accordance therewith, the Project shall continue to be used solely for _____, and shall be operated and maintained in a manner that meets the CDBG national objective of benefiting low and moderate income persons, limited clientele, as stated in 24 Code of Federal Regulations, §570.208(a)(2).

5. Condition Precedent to Effectiveness of Agreement. Reserved.

6. Entire Agreement. This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, between the parties with respect to the matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of the Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

7. Counterparts. This Agreement may be executed in counterparts by the parties hereto, each of which shall be deemed to be an original, and all such counterparts shall constitute but one and the same instrument.

8. Delivery of the Note; Further Assurances. The City agrees to deliver to SUBRECIPIENT the original Note, marked "Cancelled". Each of the parties agrees to execute further and supplemental instruments as may be requested by another party to effectuate the purposes of the Agreement.

9. Release of Mortgage and Security Agreement. The City agrees to execute and deliver to the Subrecipient a Release of Mortgage and Security Agreement. The Subrecipient shall record the Release of Mortgage and Security Agreement at the Bureau of Conveyances of the State of Hawaii and shall deliver to the City a the recorded Release of Mortgage and Security Agreement.

Exhibit 1

The City and Subrecipient have executed this Agreement on
_____, 20____.

APPROVED AS TO FORM AND
LEGALITY

CITY AND COUNTY OF HONOLULU

Deputy Corporation Counsel

By _____
Its Director of Budget and Fiscal
Services

APPROVED AS TO CONTENT

Department of Community Services

By _____
Its _____

APPROVED AS TO PROGRAM
REQUIREMENTS

Federal Grants Coordinator

Exhibit 2

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail () Pickup () To: Department of Community Services 715 South King Street, Suite 311 Honolulu, Hawaii 96813 Attention: Community-Based Development Division	Land Court () Regular () Double ()
Total pages _____	
TYPE OF DOCUMENT: RELEASE OF MORTGAGE AND SECURITY AGREEMENT	
PARTIES TO DOCUMENT:	
MORTGAGOR: _____, a Hawaii Nonprofit Corporation	
MORTGAGEE: CITY AND COUNTY OF HONOLULU, a Municipal Corporation of the State of Hawaii	
PROPERTY DESCRIPTION	DOCUMENT NO. DOCUMENT NO. TRANSFER CERTIFICATE OF TITLE NO:

Tax Map Key No. (1) _____

Exhibit 2

RELEASE OF MORTGAGE AND SECURITY AGREEMENT

THE CITY AND COUNTY OF HONOLULU has cancelled the obligations stated in the Mortgage and Security Agreement dated _____, _____ made by _____, and recorded at the State of Hawaii, Bureau of Conveyances as document _____, and therefore releases and discharges the Mortgage and Security Agreement as of the date written below.

Dated at Honolulu, Hawaii, this ____ day of _____, 20____.

APPROVED AS TO CONTENTS

CITY AND COUNTY OF HONOLULU

By: _____
Department of Community Services

By _____
Its Director of Budget and Fiscal Services

APPROVED AS TO FORM
AND LEGALITY

Deputy Corporation Counsel

APPROVED AS TO PROGRAM
REQUIREMENTS

Federal Grants Coordinator

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REGULAR SYSTEM

TAX MAP KEY NO.: (1) _____

Use Restriction Agreement

(Project Name)

THIS USE RESTRICTION AGREEMENT ("**Agreement**") is by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, the principal place of business and mailing address of which is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 ("**City**"), and _____, a Hawaii nonprofit corporation, the principal business and mailing address of which is _____, Hawaii 96_____. ("**Subrecipient**").

The City and SUBRECIPIENT entered into a Community Development Block Grant ("**CDBG**") subrecipient loan agreement dated _____, and identified as Contract F _____ which provided a grant of _____ AND _____/100 (\$ _____) in CDBG funds to SUBRECIPIENT for _____

_____ (the "**Project**" located at _____, and identified as tax map key (1) _____ a description of which is marked Exhibit A, which exhibit is attached to this Agreement and made a part of it ("**Real Property**"). The City and Subrecipient agreed to convert the form of CDBG assistance from a loan to a grant. The conversion of the CDBG loan was memorialized by an Amendment, Agreement, and Acknowledgement executed by the City and Subrecipient on _____ (the "**Amendment**"). In the Amendment, the Subrecipient agreed to continue the use of the Real Property in a manner consistent with CDBG program use and affordability requirements as set forth in 24 Code of Federal Regulations, Part 570 for a period of five (5) years from the date of this Agreement.

Now, therefore, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

1. **Term; Automatic Termination.** This Agreement shall be effective for a period of five (5) years from the date of this Agreement ("**Term**"). Upon the expiration of the Term, this Agreement shall automatically terminate and be of no further force and effect.
2. **Use Restriction Agreement.** For the Term of this Agreement, Subrecipient agrees to comply with CDBG program use and affordability requirements as set forth in 24 Code of Federal Regulations, Part 570, as may be amended. Without limiting the generality of the foregoing, the Real Property must be used for the purposes set forth in the Contract F _____.
3. **Submission of Records.** Subrecipient agrees to obtain and maintain records which evidence compliance with CDBG program use and affordability requirements. Subrecipient shall provide these records and/or other certifications, statements or records that the City may require to demonstrate compliance within 30 calendar days of the City's request.

4. **Violations; City's Remedies.** If the City determines that Subrecipient is not in compliance with the terms of this Agreement, the City shall provide written notice to Subrecipient. Upon receipt of the City's notice, Subrecipient shall have ninety (90) days to cure the violation. The failure to cure any violation to the City's satisfaction within such ninety (90) day period shall constitute a default hereunder and may result in the imposition of any remedies, administrative actions, and/or sanctions provided under or authorized by applicable law and regulations. The parties further agree that upon any default by Subrecipient, the City may apply to any court, state or federal, for specific performance under this Agreement, and/or for an injunction against violation of this Agreement, since the injury to the City arising from a violation under any terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
5. **Covenants to Run with the Land.** Subrecipient hereby subjects the Real Property to the covenants, reservations and restrictions set forth in this Agreement. Subrecipient hereby declares its express intention that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Real Property throughout the Term. The City hereby agrees that, upon request of Subrecipient or its successor in title, made on or after the end of the Term, the City shall execute a recordable instrument approved by the City for the purpose of releasing this Agreement of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the requestor.
6. **Miscellaneous Provisions.**
 - A. **Amendment.** The provisions of this Agreement may be amended only by each party executing a subsequent written agreement which states each amended provision which is recorded with the appropriate recording agency in the State of Hawaii.
 - B. **Applicable Law.** The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.
 - C. **Assignment.** Neither the entire agreement which is stated in this Agreement nor any interest in it may be assigned by any party for any purpose without the prior written consent of each other party.
 - D. **Authorization.** Each party warrants to each other party that the individuals executing this Agreement are authorized to do so. SUBRECIPIENT and the person signing for SUBRECIPIENT below further represent and warrant that there are no restrictions, agreements, or limitations on SUBRECIPIENT's right or ability to enter into and perform the terms of this Agreement.

- E. Binding Effect. Upon its execution by each party, this Agreement shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this Agreement, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.
- F. City's Right to Amend. Any provision herein to the contrary notwithstanding, during the term of this Agreement, the City reserves the right, at any time, to amend this Agreement in order to assure compliance with all HUD, City and County of Honolulu, State of Hawaii and other federal statutes, laws and regulations. All such amendments shall be within the general scope of this Agreement. The City shall provide all such amendments in writing to the Subrecipient. The Subrecipient agrees that it shall immediately take any and all reasonable steps to comply with such amendments and not to jeopardize the grant.
- G. Consent: Subsequent Agreement. If a subsequent consent required of any party by the provisions of this Agreement is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.
- H. Construction. Each party named in this Agreement acknowledges and agrees that (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Agreement; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Agreement; and (v) each party has agreed to be bound by the terms stated in this Agreement following its review and obtaining advice.
- I. Counterparts. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this Agreement and properly acknowledged, if necessary, taken together, shall constitute a single Agreement.
- J. Dates. If any dates stated in this Agreement fall on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.
- K. Defined Terms. Certain terms where they initially are used in this Agreement are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless otherwise specifically stated or clearly inappropriate in the context.

- L. Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any event not within the reasonable control of that party, including, but not limited to an act of God, public enemy, or war, fire, an act or failure to act of a government entity (except on the part of the City), unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Agreement. PROVIDED, HOWEVER, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.
- M. Gender: Number. In this Agreement, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.
- N. Independent Contractor/Non-Agency. The parties acknowledge that SUBRECIPIENT is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.
- O. Integration. This Agreement contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this Agreement. Each party acknowledges that no person or entity made any oral or written representation on which a party has relied as a basis to enter into the agreement stated in this Agreement which is not included as a provision in it.
- P. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.
- Q. No Drafter. No party shall be deemed to have drafted this Agreement. No provision stated in this Agreement shall be construed against any party as its drafter.
- R. No Offer. The provisions stated in this Agreement shall not bind any party until each party has executed it. The mere delivery of this Agreement is not an offer.
- S. No Obligations to Third Parties. Unless there is a provision stated in this Agreement to the contrary, the execution and delivery of this Agreement

shall not confer rights on any person or entity except the parties or obligate the party to any person or entity except another party.

- T. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.
- U. Notice. Any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated by each party, stated below. No other method of notice shall be effective.

CITY AND COUNTY OF HONOLULU:
Department of Community Services
Community Based Development Division
715 South King Street, Room 205
Honolulu, Hawaii 96813

_____, Hawaii 96_____
Attention: _____

- V. Paragraph Titles. The titles of provisions stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Agreement.
- W. Required Actions by the Parties. Each party named in this Agreement agrees to execute the Agreements and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to so consummate the transaction contemplated by this Agreement.
- X. Severability. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Agreement unless that effect is made impossible by the absence of the omitted provision.

- Y. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).
- Z. Survival. Any representation and warranty stated in this Agreement made by a party shall survive the termination of the agreement stated in this Agreement, unless otherwise specifically stated.
- AA. Time is of the Essence. Time is of the essence with respect to SUBRECIPIENT's obligations under this Agreement.

The City and the SUBRECIPIENT have executed this Agreement on _____.

APPROVED AS TO FORM AND
LEGALITY

CITY AND COUNTY OF HONOLULU

Deputy Corporation Counsel

By _____
Its

APPROVED AS TO CONTENT

Department of Community Services

By _____
Print Name: _____
Its _____

APPROVED AS TO PROGRAM
REQUIREMENTS

Federal Grants Coordinator

STATE OF HAWAII

)

) SS.

CITY AND COUNTY OF HONOLULU

)

On this _____ day of _____, _____, before me appeared
_____, to me personally known, who, being by
me duly sworn, did say that he/she is the _____ of
_____, and said instrument was
signed on behalf of said corporation by authority of its Board of Directors,
and said officer acknowledged said instrument to be the free act and deed of
said corporation.

Notary Public State of Hawaii

My commission expires:

